

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DONALD STEVEN YAAG,

Petitioner,

v.

ROBERT LeGRAND, et al.,

Respondents.

Case No. 3:14-cv-00295-MMD-WGC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.

By order filed October 16, 2014, this Court directed respondents to file a response to the petition. (Dkt. no. 4.) On January 20, 2015, respondents filed a motion to dismiss the petition, challenging several grounds of the petition as unexhausted and procedurally barred. (Dkt. no. 11).

Petitioner has filed a motion to amend his petition, along with a first amended petition. (Dkt. nos. 19 & 20.) The Federal Rules of Civil Procedure apply in federal habeas corpus actions to the extent that they are not inconsistent with statutory provisions or the habeas corpus rules. Rule 12, Rules Governing Section 2254 Cases in the United States District Courts. Rule 15 of the Federal Rules of Civil Procedure governs the amendment of pleadings in a federal habeas corpus action. “[A] party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

1 In this case, respondents filed no opposition to petitioner's motion to amend.
2 Respondents have filed a motion to withdraw the previously-filed motion to dismiss, in
3 which they indicate their non-opposition to petitioner's motion to amend. (Dkt. no. 21, at
4 4, lines 1-4.) Respondents request an opportunity to address procedural defenses to the
5 amended petition by way of a future motion to dismiss. (*Id.*) In the interests of justice,
6 the Court grants petitioner's motion to amend the petition. Good cause appearing, the
7 Court grants respondents' motion to withdraw their previously-filed motion to dismiss the
8 original petition.


9 It is therefore ordered that petitioner's motion for leave to amend (dkt. no. 19) is
10 granted. This action shall proceed on the amended petition (dkt. no. 20) filed April 14,
11 2015.

12 It is further ordered that respondents' motion to withdraw (dkt. no. 21) their
13 previously-filed motion to dismiss (dkt. no. 11) is granted.

14 It is further ordered that Clerk of Court shall terminate respondents' motion to
15 dismiss (dkt. no. 11) filed January 20, 2015.

16 It is further ordered that respondents shall have forty-five (45) days from entry of
17 this order within which to answer, or otherwise respond to, the amended petition. In their
18 answer or other response, respondents shall address all claims presented in the
19 amended petition. Respondents shall raise all potential affirmative defenses in the initial
20 responsive pleading, including lack of exhaustion and procedural default. Successive
21 motions to dismiss will not be entertained. If an answer is filed, petitioner shall have
22 forty-five (45) days from the date of service of the answer to file a reply.

23 DATED THIS 26th day of June 2015.

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25 _____
26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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